

91<sup>st</sup> Legislative Session – 2016

Committee: House Judiciary

Friday, February 05, 2016

P - Present  
E - Excused  
A - Absent

Roll Call

P DiSanto  
P Gibson  
P Haugaard  
P Hunt  
P Johns  
P Killer  
E Langer  
E Latterell  
P Peterson (Kent)  
P Russell  
E Westra  
P Stevens, Vice-Chair  
P Mickelson, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Mark Mickelson, Chair.

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, FEBRUARY 3, 2016

Moved by: Peterson (Kent)  
Second by: Hunt  
Action: Prevailed by voice vote.

HB 1088: revise and consolidate certain civil forfeiture provisions.

Presented by: Representative Haggar (Don)  
Proponents: Jeromy Pankratz, Attorney General

Lindsey Riter-Rapp also spoke to the proposed amendment

MOTION: AMEND HB 1088

1088yb

On page 1, line 8, of the printed bill, delete "this Act" and insert "chapters 34-20B or 22-24A".

On page 2, line 3, before "this" insert "the chapters listed in section 20 of".

On page 2, line 5, delete "section 21 of this Act" and insert "subdivision 34-20B-70(4) or 22-24A-15(4)".

On page 2, line 8, delete "of the crimes listed in" and insert "any crime in the chapters listed in section 20 of".

On page 2, line 10, delete "section 22" and insert "subdivision 34-20B-70(4) or 22-24A-15(4)".

On page 2, line 17, delete "listed in" and insert "in the chapters listed in section 20 of".

On page 2, line 19, delete "section 22 of this Act" and insert "subdivision 34-20B-70(4) or 22-24A-15(4)".

On page 2, line 23, delete "listed in" and insert "in the chapters listed in section 20 of".

On page 3, line 23, delete "listed in this chapter" and insert "in the chapters listed in section 20 of this Act".

On page 4, line 3, delete "14, 15, or 23" and insert "14 or 15".

On page 4, line 16, delete everything after "subdivisions" and insert "34-20B-70(4), (6), and (7) or 22-24A-15(4), (6), and (7), or section 1".

On page 5, line 7, delete "in a crime listed in this Act" and insert "of a crime".

On page 5, line 13, delete "section 21 of this Act" and insert "subdivisions 34-20B-70(2), (3), (5), (6), and (7) or 22-24A-15(2), (3), (5), (6), and (7)".

On page 6, line 1, delete "or section 22 of this Act" and insert "of this Act or subdivision 34-20B-70(4) or 22-24A-15(4)".

On page 8, line 11, delete "Bureau of Narcotics and Dangerous Drugs" and insert "Division of Criminal Investigation".

On page 8, delete lines 14 to 24, inclusive, and insert:

" Section 21. That § 34-20B-70 be amended to read:

34-20B-70. The following are subject to forfeiture pursuant to this Act and no property right exists in them:

- (1) All controlled drugs and substances and marijuana which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;
- (2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance or marijuana in violation of the provisions of this chapter or chapter 22-42;
- (3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);
- (4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana in excess of one-half pound or any quantity of any other property described in subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive. This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess, or conceal or facilitate the transportation, possession, or concealment of marijuana or a controlled substance in aid of any other offense;
- (5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
- (6) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance or marijuana;
- (7) Any assets, interest, profits, income, and proceeds acquired or derived from the unlawful purchase, attempted purchase, distribution, or attempted distribution of any controlled drug or substance or marijuana.

Property described in subdivision (1) shall be deemed contraband and shall be summarily forfeited to the state, property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of section 14 of this Act, and property described in subdivision (4) is subject to forfeiture under the terms of section 15 of this Act.

Section 22. That § 22-24A-15 be amended to read:

22-24A-15. Any person who is convicted of an offense under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9 shall forfeit to the state, pursuant to this Act, the person's interest in the following and no property right exists in them:

- (1) Any photograph, film, videotape, book, digital media or visual depiction that has been manufactured, distributed, purchased, possessed, acquired, or received in violation of §§ 22-

- 19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- (2) Any material, product, and equipment of any kind that is used or intended for use in manufacturing, processing, publishing, selling, possessing, or distributing any visual depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
  - (3) Any property that is used, or intended for use, as a container for property described in subdivisions (1) and (2) of this section, including any computers and digital media;
  - (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or conceal, or that is used, or intended for use, to transport, or in any manner facilitate any activity proscribed under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
  - (5) Any book, record, and research, including microfilm, tape, and data that is used, or intended for use, in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
  - (6) Any funds or other things of value used for the purposes of unlawfully carrying out any activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9; and
  - (7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9.

Any property described in subdivision (1) of this section shall be deemed contraband and shall be summarily forfeited to the state. ~~Any other property seized and forfeited shall be used to reimburse the actual costs of the criminal investigation and prosecution. Any amount over and above the amount necessary to reimburse for the investigation and prosecution shall be used to satisfy any civil judgments received by victims. All remaining proceeds from the sale of any forfeited property shall be paid into the South Dakota internet crimes against children fund. Property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of section 14 of this Act, and property described in subdivision (4) is subject to forfeiture under the terms of section 15 of this Act."~~

Delete pages 9 to 12, inclusive

On page 13, delete line 1.

On page 17, delete lines 14 to 24, inclusive.

On page 18, delete lines 1 to 8, inclusive.

On page 20, delete lines 19 to 24, inclusive.

Delete page 21.

On page 22, delete lines 1 to 8, inclusive.

Moved by: Russell  
Second by: Hunt  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1088 AS AMENDED

Moved by: Russell  
Second by: Hunt  
Action: Withdrawn.

MOTION: DEFER HB 1088 UNTIL ANOTHER LEGISLATIVE DAY

Moved by: Stevens  
Second by: Hunt  
Action: Prevailed by roll call vote. (10-0-3-0)

Voting Yes: DiSanto, Gibson, Haugaard, Hunt, Johns, Killer, Peterson (Kent), Russell, Stevens, Mickelson

Excused: Langer, Latterell, Westra

HB 1064: apply certain penalties regarding damages, tampering, and malicious acts to certain railroads that carry passengers.

Presented by: Representative Verchio

MOTION: AMEND HB 1064

1064fa

On page 1, line 5, of the printed bill, delete "§§ 49-16A-105 to 49-16A-109, inclusive," and insert "§§ 49-16A-107 and 49-16A-108".

On page 1, line 7, before "." insert "and the person owns, leases, or uses a minimum of five miles of railroad track".

Moved by: Gibson  
Second by: Hunt  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1064 AS AMENDED

Moved by: Johns  
Second by: Haugaard  
Action: Prevailed by roll call vote. (10-0-3-0)

Voting Yes: DiSanto, Gibson, Haugaard, Hunt, Johns, Killer, Peterson (Kent), Russell, Stevens, Mickelson

Excused: Langer, Latterell, Westra

HB 1105: give the court discretion to grant a continuance of a protection order in certain situations.

Presented by: Representative Johns  
Proponents: Greg Sattizahn, Unified Judicial System

MOTION: DO PASS HB 1105

Moved by: Stevens  
Second by: Gibson  
Action: Prevailed by roll call vote. (10-0-3-0)

Voting Yes: DiSanto, Gibson, Haugaard, Hunt, Johns, Killer, Peterson (Kent), Russell, Stevens, Mickelson

Excused: Langer, Latterell, Westra

MOTION: PLACE HB 1105 ON CONSENT CALENDAR

Moved by: Stevens  
Second by: Gibson  
Action: Prevailed by voice vote.

HB 1183: revise certain provisions regarding the jurisdiction of magistrate courts to issue protection orders.

Presented by: Representative Johns  
Proponents: Greg Sattizahn, Unified Judicial System  
Matt Konenkamp, Governor's Office

MOTION: AMEND HB 1183

1183ra

On page 1, line 10, of the printed bill, delete everything before "." and insert "22-19A or 25-10".

Moved by: Gibson  
Second by: Hunt  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1183 AS AMENDED

Moved by: Haugaard  
Second by: Gibson  
Action: Prevailed by roll call vote. (10-0-3-0)

Voting Yes: DiSanto, Gibson, Haugaard, Hunt, Johns, Killer, Peterson (Kent), Russell, Stevens, Mickelson

Excused: Langer, Latterell, Westra

MOTION: PLACE HB 1183 ON CONSENT CALENDAR

Moved by: Stevens  
Second by: Russell  
Action: Prevailed by voice vote.

MOTION: ADJOURN

Moved by: Haugaard  
Second by: Gibson  
Action: Prevailed by voice vote.

Liz Markley  
Committee Secretary

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G. Mark Mickelson, Chair